

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2295 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MADANLAL HANGAMILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

ME SS PATEL AGP for Respondent No. 1

MR BHARAT T RAO for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner herein challenges the order of preventive detention dated 3rd March, 1999, made by the District Magistrate, Surat, under the powers conferred

upon her under sub-section (2)(a) of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act').

The order of detention is based on several grounds enumerated in the grounds of detention furnished to the petitioner along with the order of detention. The grounds of detention suggest that the petitioner was running a fair price shop under the permit issued by the Government. On several occasions, the petitioner was found to have committed several irregularities for which the stock in question was ordered to be confiscated. Earlier, once his licence also was suspended. The order suspending the licence was set aside in appeal and the petitioner, thus, continued to operate his fair price shop. During the incident in question, the display of the stock showed no stock of food-grain, sugar kerosene and edible oil, while on inspection, it was found that in the petitioner's godown, a large quantity of food-grain, kerosene, edible oil and sugar was stocked. On further inquiry, it was found that the bills prepared in the names of the card holders were bogus. The articles shown in the bills were not sold to the respective card holders. Further the petitioner had also undertaken to distribute the cotton seed oil to the Mid Day Meal Centres in various schools in the District. However, on investigation, it was found that the superior quality of cotton seed oil which was supplied by the State Government for distribution to the Mid Day Meal Centres was not distributed to the said centres, and instead, locally manufactured inferior quality of cotton seed oil was supplied to the various Mid Day Meal Centres, and such oil was also found to be adulterated. The petitioner is, therefore, believed to have misappropriated the food-grains and other articles meant to be distributed to the card holders at the subsidised rates, and sold in open market for personal gain.

The order of detention has been challenged on several grounds. The learned advocate Mr. Pahwa appearing for the petitioner has submitted that the petitioner had made representations to the District Magistrate as well as the Central Government. The representation made to the District Magistrate was required to be forwarded to the State Government. However, the said representation have not been attended to with required promptitude and have been decided belatedly. He has also submitted that under order dated 26th February, 1999, the licence of the petitioner was suspended for a period of 90 days and the petitioner has,

thus, been put out of harms-way, and there was no need to detain the petitioner under the Act. It is also submitted that in any view of the matter, the Detaining Authority has not considered putting the petitioner out of harms-way by cancelling the licence and the said possibility having not been examined by the Detaining Authority, the subjective satisfaction recorded by the Detaining Authority is vitiated for non-application of mind. Consequently, the order also should fail. Further, one of the grounds which has been taken into consideration is that of supply of adulterated cotton seed oil to the Mid Day Meal Centres. The supply of adulterated food article would not amount to disruption of supply of essential articles, nor can it be said to be blackmarketing and, therefore, the consideration of the said ground by the Detaining Authority should vitiate the subjective satisfaction recorded by the Detaining Authority and consequent order also. In support of his contentions, he has relied upon the judgments in the matters of BACHHRAJI BIHARILAL PITALIYA VS DISTRICT MAGISTRATE SURAT & ORS.(1994 {1} GLR, 843); VIVEKBHAI CHHOTUBHAI CONTRACTOR VS STATE OF GUJARAT, (1999 {2} GLR, 1120); and KISHOR AMRATLAL PATEL S/O DETENU AMRATLAL MOHANLAL PATELL VS RAJIV TAKRU & ORS, (1987 (2) GLR, 1031). He has further contended that even otherwise, the petitioner's licence has been taken away on 27th February,, 1999, and the petitioner has, on 15th March, 1999, applied for cancellation of licence. In view of the petitioner now being out of the harm's way, his continued detention is not warranted.

The petition has been contested by the learned AGP Mr. Patel. He has relied upon the affidavit made by the Detaining Authority and the records of the matter, and has submitted that there has been no delay at the end of the Detaining Authority or the State Government in considering and deciding the representation made against the impugned order of detention. He has further submitted that even if there is a delay of a day or two, no undue importance is required to be given to such delay, and such delay should not vitiate the order of detention. In support of his contention, he has relied upon the judgment of this court in the matter of PARSHOTTAMBHAI NAVALRAM KHEMANI VS STATE OF GUJARAT & ANR. (1985 {2} GLR 620).

In the matter of B.B.Pitaliya (supra), the Division Bench of this court has considered what could be said to be 'blackmarketing'. In paragraph-3 of the judgment, the court has held that " Blackmarketing has at its base a shortening of supplies because blackmarket

flourishes best when the availability of commodities is rendered difficult. It has a definite tendency to disrupt supplies when scarcity exists or scarcity is created artificially by hoarding to attain illegitimate profits " . In the matter of Vivek (supra), the detenu was found to be indulging into blackmarketing and for which his agency was terminated on 14th May, 1998, while the order of detention under the Act was made on 31st July, 1998 i.e. sometime after the agency was terminated., The court held that " how after termination of agency the petitioner could have been able to carry on his illegal activities either after 14-5-1998 or after 18-5-1998. On this point, mind of the Detaining Authority was not at all drawn. As such, consideration of alternative efficacious remedy suffers from vice of non-application of mind ". In the matter of Kishor Amrutlal (supra), the court held that the supply of adulterated food article is not covered under section-3 of the Act and for such an act, person can not be detained under the Act. Further, if one of the grounds relied upon by the Detaining Authority is irrelevant or extraneous to the scope and ambit of section 3 of the Act, even though, there may be other relevant grounds supporting the detention orders, the entire subjective satisfaction would fail on account of consideration of one extraneous ground and only on this short point, the detention order is liable to be quashed. Relying upon this judgment, Mr. Pahwa has vehemently argued that one of the grounds on which the subjective satisfaction has been based is that of supply of adulterated cotton seed oil to the Mid Day Meal Centres which could not have been considered since the supply of adulterated food article can not be brought within the scope and ambit of section 3 of the Act. In the matter of Purshottam Khemani (supra), the court was essentially considering the fact of availability of alternative remedy. The court held that " alternative remedy may be by way of prosecution under the Act or under the Essential Commodities Act or by way of departmental action against the concerned licence holder by way of cancellation of licence, suspension of licence, confiscation of stock etc. This vital consideration must permeate the process of subjective satisfaction of the Detaining Authority before the orders of detention are passed. If this vital considerations have not entered the exercise, exercise would not be comprehensive enough and would be liable to fail on account of non-application of mind to all the material vital aspects having direct impact on the subjective satisfaction to detain the concerned petitioner. But the aforesaid attack on the subjective satisfaction underlying the detention order is miles away

from the submissions that even after the subjective satisfaction is properly arrived at on existing material and on consideration of vital facts and aspects merely because subsequently the licence got cancelled or surrendered, subjective satisfaction would get retrospectively affected or vitiated. Such an extreme contention can not be countenanced ".

I am afraid, I can not agree with either of the contentions raised by Mr. Pahwa. The order of detention made by the Detaining Authority was approved by the State Government on 12th March, 1999. The representation made on 9th March, 1999, was delivered in the office of the Detaining Authority on 11th March, 1999. She being no present in the office on account of some official duties, and 13th and 14th being holidays, the said representation was rejected on 15th March, 1999, and was communicated to the petitioner immediately, and was sent to the State Government for its consideration on 15th March, 1999. Mr. Patel having perused the records of the matter, has submitted that the representation was sent to the State Government on 15th March, 1999. The State Government having received it on 15th March, 1999, had considered it at various level on 17th, 18th and 19th March 1999. The same was rejected on 20th March, 1999. Considering the above dates, I find no undue or avoidable delay having been caused in considering the representation made against the impugned order of detention. The contention that one of the grounds of detention i.e supply of adulterated oil is extraneous to the scope and ambit of section 3 of the Act, is fallacious. Upon perusal of the grounds of detention, I find that the allegation is not that the petitioner supplied adulterated oil to the Mid-Day- Meal Centres. The allegation is that the Government had supplied a superior quality of cotton seed oil for distribution to the Mid Day Meal Centres, which he did not do and instead supplied locally made inferior quality of cotton seed oil to the Mid Day Meal Centres. Thus, the allegation is of not supplying the superior quality of cotton seed oil to the Mid Day Meal Centres, and instead disposing of the same for personal gain. Hence, the allegation, essentially is that of blackmarketing, which is a legitimate ground on which one can be detained under the Act. Hence, no extraneous ground has been taken into consideration by the Detaining Authority for basing her subjective satisfaction. It is also not true that the Detaining Authority has not considered the possibility of other remedies which may be available. The grounds of detention clearly stipulate that the suspension or cancellation of licence may not be adequate. The said reference can also be not said to be

mechanical. The past experience of the petitioner has proved the suspension of a licence to be fruitless. As referred to hereinabove, earlier the petitioner's licence was suspended for similar kind of irregularity. But the same was set aside in appeal and the petitioner could not be prevented from continuing his nefarious activities. In spite of several actions taken against him in the past, the petitioner has continued his nefarious activities and as an ultimate remedy, preventive detention has been resorted to. The fact that the petitioner's licence was taken away on 27th February, 1999, or that his application for cancelling the licence is pending before the State Government shall also, in view of aforesaid Division Bench judgment, not vitiate the subjective satisfaction arrived at by the Detaining Authority and the consequential order of detention.

For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged.

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JOSHI